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Joint Inspection Unit

A second review of the implementation of headquarters agreements concluded by United Nations system organizations: provision of headquarters premises and other facilities by host countries

Note by the Secretary-General

The Secretary-General has the honour to transmit for the consideration of the members of the General Assembly his comments and those of the United Nations System Chief Executives Board for Coordination on the report of the Joint Inspection Unit entitled "A second review of the implementation of headquarters agreements concluded by United Nations system organizations: provision of headquarters premises and other facilities by host countries" (see A/61/694).

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Summary

Organizations of the system generally welcome the findings and recommendations of the Joint Inspection Unit contained in its report (see A/61/694). The report has as its core objective the identification of best practices for the improvement of headquarters premises and other facilities granted under the headquarters agreements concluded by the United Nations organizations. It is a useful study that will contribute to the law and practice of the United Nations system organizations. It focuses attention on the importance of periodic reviews of the provisions of host country agreements in order to ensure that the best practices identified are incorporated into existing agreements with the view to contributing to effective and consistent practices and policies throughout the United Nations system. While noting that the implementation of some of the recommendations contained in the report give rise to legal impediments, organizations note the Unit's reminders to Member States for compliance with their obligations under the applicable headquarters agreements.

I. Introduction

1. The present report is the second in a series that reviews headquarters agreements concluded by United Nations system organizations. Where the first report, entitled "Review of the headquarters agreements concluded by the organizations of the United Nations system: human resources issues affecting staff" (see A/59/526) focused on issues relating to the reform of human resources management, this report concentrates on headquarters premises and facilities, including the issuance of visas, matters of taxation, freedom of movement within the host countries and security issues. The report seeks to identify best practices and contribute to the achievement of consistent standards among organizations in these areas.

II. General comments

2. Organizations of the United Nations system appreciate the scope, timeliness and depth of the report of the Joint Inspection Unit. They note that it identifies the agreements that regulate the status of organizations and their staff within host countries and provide certain facilities, privileges and immunities to facilitate the effective and independent performance of the Organization's work. It also recognizes that the basis of existing headquarters agreements is in paragraph 1 of Article 105 of the Charter of the United Nations and in the conventions on the privileges and immunities of the United Nations and the specialized agencies.

3. Echoing the report, most organizations of the system report that, in general and except for some isolated and specific issues, they enjoy an excellent relationship with their host country Governments and are very satisfied with the host country agreements currently in place. Many note that they maintain a straightforward dialogue with their host country on any issue that may arise and report that in many cases they receive excellent, and sometimes generous, services.

4. Some organizations felt that acknowledging useful practices and concerns in the regional commissions' duty stations could have strengthened the report of the Joint Inspection Unit. For example, the joint committee of the Economic Commission for Africa and the host country, established in July 1997, represents an effective practice or option that could have been included in part V of the report.

III. Specific comments on recommendations

Recommendation 1

Executive heads of United Nations organizations should remind their officials and staff members of their obligation to be exemplary in respecting the laws, regulations, traditions and habits of the host countries.

5. Organizations of the system universally agree with this recommendation, with many indicating that they are already taking steps to remind staff members of their obligations in this regard, mostly through regular communication with staff members. Organizations note that the core values of integrity, cultural sensitivity and valuing diversity already apply to all staff and that they had been incorporated

into job descriptions and assessed during staff recruitment, selection and performance appraisal. Some organizations are exploring taking further steps, including introducing measures whereby disciplinary actions can be taken in cases of particular gravity where staff members do not comply with local laws or honour their private legal or financial obligations.

6. The United Nations Secretariat in New York has well-established rules and procedures in this regard, which are supported by the jurisprudence of the United Nations Administrative Tribunal. Staff regulation 101.2 (c) provides that it is a basic obligation of United Nations staff members to comply with local laws and honour their private legal obligations, including but not limited to the obligation to honour orders of competent courts. Further, staff rule 104.4 (d) requires staff members who are the subject of criminal proceedings in local courts to immediately report the fact to the Secretary-General in order that a determination may be made as to the appropriate action to be taken. While, as a general principle, the Organization will not interfere in the personal affairs of its staff members, the Secretary-General has broad discretion to determine what may constitute misconduct, and a violation of local laws may be the subject of disciplinary proceedings if it reflects adversely on the Organization, is incompatible with the proper discharge of a staff member's functions or has an adverse effect on the independence and impartiality of the staff member. In addition, a payroll deduction system has been in place since 1999 to ensure effective relief when staff members fail to comply with family support court orders.

Recommendation 2

Legislative bodies of United Nations organizations should:

(a) Remind the host countries of their legal obligations concerning the headquarters agreements and the benefits of the presence of United Nations organizations in their respective countries, and that the full implementation of headquarters agreements is also to their benefit;

(b) Request their respective executive heads to report back at appropriate intervals on the implementation of the headquarters agreements.

7. Organizations note that this recommendation is directed at the legislative bodies and are generally supportive of this recommendation. Most indicate that they seldom encounter difficulties with their host countries and therefore reminders of this nature are rarely necessary, despite the occasional problems in specific areas. However, this is not universal, and some organizations experience significant difficulties in this regard.

Recommendation 3

Executive heads of the United Nations system organizations should negotiate with and encourage the host countries to provide more generous facilities to the organizations in the acquisition or refurbishment of their headquarters premises by, for example, providing premises free of charge, or providing interest-free loans or sharing costs.

8. Organizations of the system agree with the recommendation and note that negotiations with host country authorities occasionally result in generous contributions to headquarters premises. Furthermore, the Secretary-General has always sought to encourage host countries to provide more generous facilities to organizations and to ensure that prior to the conclusion of agreements and establishment of physical presence, there is satisfactory resolution of these matters. It is such efforts that have led to the recent conclusion of negotiations with the host Government in Geneva for subsidized premises.

Recommendation 4

Legislative bodies of those United Nations system organizations that bear the full cost or part of the cost of major repairs and refurbishments of their headquarters premises should establish a special fund to ensure adequate financial resources for such repairs and refurbishments in their regular budgets, if they have not yet done so.

9. Organizations agree with recommendation 4, and those organizations to which this applies indicate some success in such efforts. For example, the United Nations Educational, Scientific and Cultural Organization (UNESCO) notes that a special fund to ensure adequate financial resources for major repairs and refurbishments in the regular UNESCO budget will be submitted to its legislative body. The World Health Organization (WHO) notes that it already has a real estate fund for such purposes (as acknowledged in annex II, p. 24 of the JIU report under the WHO line). The United Nations Secretariat notes that such a multi-year account would facilitate the implementation of multi-year refurbishment projects. Currently, financial resources for major repairs and refurbishments of the United Nations offices at Geneva, Vienna and Nairobi and the regional commissions are budgeted for in a specific budget section of the United Nations regular budget that is separate from the other requirements of the offices in those duty stations. Funds allocated for that purpose at Headquarters are approved on a biennial basis.

Recommendation 5

Legislative bodies of United Nations organizations headquartered in the same host country should:

(a) Consider establishing a joint formal forum, similar to the Committee on Relations with the Host Country in New York, to enhance relations with the host country;

(b) Ensure that adequate resources are allocated from their regular budget to support the establishment and proper functioning of this formal forum.

10. While noting that this recommendation is directed at legislative bodies, organizations express a range of opinions on the topic. The United Nations organizations in New York point out that the Committee on Relations with the Host Country is a subsidiary organ established by the General Assembly in its resolution 2819 (XXVI) of 15 December 1971 and functions well. Also, as noted in the report of the Joint Inspection Unit, a similar body, the Host Country Liaison Committee,

has been established in Nairobi to tackle issues of specific relevance between the United Nations offices and the Kenyan authorities. The relevant government ministries are represented in the Host Country Liaison Committee, along with officials from the United Nations Office at Nairobi, United Nations Environment Programme (UNEP) and United Nations Human Settlements Programme (UN-Habitat) and the United Nations Resident Coordinator, the latter representing the regional and country offices of the United Nations system. However, the purposes of the intergovernmental body proposed by the Joint Inspection Unit and that of the Host Country Liaison Committee in Nairobi differ, and since the United Nations system in Kenya is satisfied with the results achieved to date by the Committee, it recommends that the forum remain as is, without representation of the diplomatic corps. The Secretary-General is of the view that if the diplomatic missions perceive the need for a representative body in Nairobi, they may wish to establish a separate forum to safeguard the interests of the diplomatic community in Kenya.

11. While in general many organizations agree that the establishment of similar subsidiary bodies at duty stations could be beneficial to the diplomatic communities, to the United Nations offices and their personnel in those locations, some organizations indicate that they enjoy good communication with their host country and therefore do not feel a strong need for such bodies at all. For example, in Vienna, the issue of establishing a joint committee/forum on relations with the host country was studied and it was concluded that organizations would not necessarily benefit from the establishment of a committee. As noted in the recommendation, where established, these committees entail certain financial burdens, the magnitude of which would be difficult to determine until the servicing requirements of such committees were determined.

Recommendation 6

The General Assembly should request the Secretary-General to direct the Directors-General of the United Nations Offices at Nairobi and Vienna to coordinate the establishment of such joint forums, in collaboration with the host countries and other United Nations organizations headquartered in their duty stations.

12. As this recommendation is directed at the leadership of the offices in Vienna and Nairobi, organizations did not express themselves widely on this recommendation, except to suggest that the Directors-General of these offices may not have sufficient authority to create a forum that falls within the purview of the Member States. Furthermore, as noted in the report of the Joint Inspection Unit and in the comments to recommendation 5 above, the Nairobi-based organizations are satisfied with the Host Country Liaison Committee, and Vienna-based organizations believe the existing mechanism for working with the host country operates to their satisfaction.

Recommendation 7

Executive heads of United Nations system organizations should:

(a) Remind the host countries of their obligations under the headquarters agreements to issue visas free of charge and in a timely fashion to staff and officials of United Nations organizations;

(b) Encourage host countries to establish a reasonable time frame for the processing of visas, in collaboration with the organizations, so as to avoid delays and denials in the issuance of visas, especially to those officials and staff members who have been previously granted visas;

(c) Report back to the legislative bodies on progress made in this regard.

13. Organizations support this recommendation and note that it restates the substance of a similar recommendation from the first report of the Joint Inspection Unit on headquarters' agreements. While some organizations, as noted in the report, experience excessive delays, others point out that this occurs rarely. The United Nations Secretariat points to General Assembly resolution 61/41 on the report of the Committee on Relations with the Host Country, adopted by the Sixth Committee, in which the Committee on Relations with the Host Country anticipates that the host country will enhance its efforts in the areas noted in the recommendation. Nevertheless, the Secretariat foresees difficulty in implementing the recommendation, as it directs the Secretary-General to raise visa-related issues with every host country in which the Organization has established its presence. The Secretariat is therefore of the view that the minor difficulties that are experienced in relation to the issuance of visas in terms of delays and charges can continue to be dealt with on a bilateral basis, when necessary.

Recommendation 8

The United Nations System Chief Executives Board for Coordination should regularly review the practical implementation of privileges and immunities granted to international organizations, especially as far as the interpretation of such terms as "direct and indirect taxes", "charges", "levies" and "fees" is concerned, so as to ensure their uniform application by host countries in the context of headquarters agreements.

14. In its analysis of this issue, the Joint Inspection Unit describes several situations whereby the taxes and levies applied to United Nations staff members vary across countries. They note, for example, that in some countries staff at some levels may purchase duty-free cars and sell them after two years, while in other countries staff may need to wait six years before selling a duty-free car without paying the taxes. They believe that some of these discrepancies may stem from confusion originating from a lack of clear definitions or varying interpretations of the terms used to describe these taxes or levies. Organizations generally support the desire of the Joint Inspection Unit to gain some consistent clarity into these terms and are willing to provide support to the Chief Executives Board for Coordination if needed to satisfy this recommendation.

Recommendation 9

The Secretary-General should direct the Director-General of the United Nations Office at Nairobi to pursue his efforts to negotiate with the host country to establish the practice of "most favoured treatment", as applied in other duty stations, with a view to ensuring common standards in the application of facilities, privileges and immunities granted to all United Nations officials and staff members in Nairobi, whether they are operating from headquarters or regional, local and country offices.

15. As this recommendation is directed specifically at the United Nations Office at Nairobi, organizations did not widely comment, except to note that efforts have been made by the Office to reach a mutually acceptable understanding on the matter. The Host Country Liaison Committee has obtained the agreement of the Government of Kenya to harmonize and extend the privileges and immunities of the host country agreement of UNEP, UN-Habitat and the United Nations Office at Nairobi to all the United Nations organizations and agencies represented in Kenya based on the most-favourable host country agreement, which is currently applicable to the United Nations Office at Nairobi, UN-Habitat and UNEP. The local government has, however, requested that the United Nations Office at Nairobi should manage the liaison/administration of the privileges on behalf of all the United Nations system agencies in Kenya for control and accountability purposes. The Office has also commenced discussions with other United Nations offices in Kenya regarding the establishment of a common service so as to put in place the mechanism requested by the government.

16. Some organizations note that the issue of "most favoured treatment" can extend to duty stations other than Nairobi, specifically Vienna, and should be further examined.

Recommendation 10

The legislative bodies of United Nations organizations should:

(a) Allocate appropriate financial resources to ensure adequate and realistic security facilities in all their duty stations;

(b) Remind host countries of their obligation to provide adequate security for United Nations organizations premises and staff.

17. As adequate staff security remains a priority throughout the United Nations system, all organizations support this recommendation. However, they offer some reservations with regard to reminding host countries of their obligations to provide adequate security for United Nations organizations, premises and staff. They believe that before this becomes necessary, organizations should ensure that host country agreements properly reflect the responsibility of providing security, and that those agreements should be revised accordingly, using standardized language. Furthermore, they note that the relatively high cost of providing adequate security at United Nations facilities and to United Nations personnel should not limit the full implementation of security requirements. Considering the lengthy negotiations for amendments of host country agreements, the United Nations Secretariat notes that the Department of Safety and Security will continue to concentrate its efforts on

improving cooperation with host countries at all levels, increasing political commitments, promoting host country accepted principles and guidelines, and, where necessary, providing support to United Nations country teams.

Recommendation 11

The Secretary-General should direct the Department of Safety and Security to:

(a) Review the headquarters minimum operating security standards with a view to formulating more realistic and practicable security requirements for adoption by the Inter-Agency Security Management Network;

(b) Develop guidelines, in collaboration with those organizations renting commercial facilities and those that lease office space in their headquarters premises to non-United Nations entities, for the application of to their specific circumstances.

18. Organizations of the system welcome this recommendation. They note that the Department of Safety and Security acts as the technical adviser during security assessments and for the implementation of the headquarters minimum operating security standards and that Inter-Agency Security Management Network recommendation 62 of 2006 endorses the proposal that the apparent confusion regarding the applicability of the headquarters standards, minimum operating security standards and minimum operating residential security standards should be addressed by integration of the different minimum operating security standards documents into one comprehensive document. To the extent possible, organizations believe the Department of Safety and Security should develop a comprehensive minimum operating security standards framework that satisfies the requirements of both the United Nations Secretariat duty stations and the offices of the agencies, funds and programmes, including agency headquarters in category H duty stations. The extensive expertise and experience of the security and safety services should be sought in order to develop a common set of best practices and physical security standards, while also ensuring that the minimum operating security standards applicable for each country and duty station reflects the specific situation at that location, as justified by the latest security risk assessment.

Recommendation 12

The Secretary-General should continue to urge the host countries to abide by their obligations as contained under the headquarters agreements and allow full access and freedom of movement of all officials and staff members of the United Nations, so as to facilitate the full functioning of the organization.

19. While organizations support this recommendation, they also note that in most duty stations, no major problems exist with regard to the access to United Nations premises by officials and staff members of the United Nations and that in some duty stations, any restrictions of movement may only apply within the host country and with respect to non-official, private travel. In New York, these matters are regularly discussed in the Committee on Relations with the Host Country and brought to the attention of the relevant authorities at the Secretariat, as and when necessary. For

example, the United Nations Secretariat notes the request of the General Assembly in paragraph 4 of resolution 61/41 that the host country consider removing the remaining travel restrictions, and noted that during the reporting period some travel restrictions previously imposed by the host country on staff of certain missions and staff members of the Secretariat of certain nationalities were removed.

20. Organizations recognize, however, that as noted in the report of the Joint Inspection Unit, in some duty stations that issue remains a key concern.